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**IN THE
COURT OF APPEALS OF INDIANA**

RICKEY LOWERY,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 49A02-0610-CR-923
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Grant W. Hawkins, Judge
Cause No. 49G05-0512-FC-216079

June 21, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Rickey Lowery appeals from his conviction for Child Molestation, as a Class C felony, following a bench trial. The sole issue he raises on appeal is whether the State presented sufficient evidence to sustain his conviction.

We affirm.

FACTS AND PROCEDURAL HISTORY

In early 2003, Lowery moved from Texas to Indianapolis, where his wife and nine-year-old son, R.L., lived, and he expressed his intent to reunite the family. For the two and one-half months Lowery lived with his wife and R.L., Lowery occasionally slept in R.L.'s bedroom, as Lowery's snoring bothered his wife. When sleeping in R.L.'s room, Lowery shared R.L.'s bed. R.L. wore a t-shirt and boxers while he slept.

On multiple occasions, while Lowery was in R.L.'s bed with R.L., Lowery used his hand to touch R.L.'s penis. The first time that happened, Lowery touched R.L.'s penis from on top of R.L.'s clothes. Lowery then moved his hand from side to side. The second time Lowery touched R.L.'s penis, Lowery reached under R.L.'s clothing and did not move his hand. Both of those incidents lasted a couple of minutes, and each time Lowery and R.L. were lying on their backs. R.L. was "scared" and "[u]pset" during the two incidents, and because of those emotions he did not say anything to Lowery. Transcript at 27-28.

After two and one-half months, Lowery left his wife's residence after an argument and returned to Texas. About two years later, R.L. attended a "good touch, bad touch program" at his school. Id. at 29. Afterwards, R.L. informed a woman involved with that program of the incidents involving his father, and an investigation resulted. On

December 21, 2005, the State filed an information against Lowery alleging two counts of child molesting, each as a Class C felony. R.L. testified at the subsequent bench trial, after which Lowery was acquitted of the count relating to the touching from on top of R.L.'s clothes but was convicted on the count relating to the touching of R.L. under R.L.'s clothes. This appeal ensued.

DISCUSSION AND DECISION

Lowery contends that the State did not present sufficient evidence to support his conviction. When reviewing a claim of sufficiency of the evidence, we do not reweigh the evidence or judge the credibility of the witnesses. Jones v. State, 783 N.E.2d 1132, 1139 (Ind. 2003). We look only to the probative evidence supporting the verdict and the reasonable inferences that may be drawn from that evidence to determine whether a reasonable trier of fact could conclude the defendant was guilty beyond a reasonable doubt. Id. If there is substantial evidence of probative value to support the conviction, it will not be set aside. Id.

Lowery maintains that the State presented insufficient evidence of an element of the crime of child molesting as a Class C felony, specifically, of his intent to arouse or to satisfy either his own sexual desires or those of R.L. See Ind. Code § 35-42-4-3(b) (West 2004). It is undisputed that Lowery placed his hand inside R.L.'s boxers while they shared a bed. Still, on appeal, Lowery contends that, because "[i]t is clear that one's hand can be moved from above [bed] covers to below the covers during sleep[,] . . . [i]t is no less reasonable that one's hand could move beneath loose boxer shorts during sleep." Appellant's Brief at 8. We cannot agree.

As the trial court stated, “[i]t’s one thing for a hand to wander to an area of someone else’s body, it is another thing to get under their clothing.” Transcript at 58. “A defendant’s intent to gratify sexual desires may be inferred from an intentional touching of the child victim’s genital area.” Short v. State, 564 N.E.2d 553, 559 (Ind. Ct. App. 1991). On these facts, we must conclude that there is substantial evidence of probative value to support the conclusion that Lowery intentionally touched R.L.’s genital area, and that that intentional touching was done with an intent to satisfy Lowery’s sexual desires. See Jones v. State, 783 N.E.2d at 1139; Short, 564 N.E.2d at 559.

Finally, Lowery lists a number of events that did not occur, arguing that, had Lowery had the intent to arouse his sexual desires by touching R.L.’s penis, those nonexistent events would be present. Specifically, Lowery contends that there was no evidence that Lowery was awake at the time, Lowery’s hand did not move while on R.L.’s penis, Lowery made no sounds or movements during the incident to signify sexual arousal, and Lowery did not treat R.L. differently before or after the incident or otherwise discuss the matter with R.L. Lowery also generally notes that R.L. “did not exhibit any signs or symptoms that can be associated with being molested, and in fact did not even feel the need to talk to anyone about it until over two years later.” Appellant’s Brief at 9. But these arguments amount to a request that this court reweigh the evidence, which we will not do. Jones, 783 N.E.2d at 1139.

Affirmed.

BARNES, J., and MATHIAS, J., concur.